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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

25 IN RE: UBER TECHNOLOGIES, INC.,
26 PASSENGER SEXUAL ASSAULT
27 LITIGATION

28 This Document Relates to:

ALL ACTIONS

Case No. 3:23-md-03084-CRB

**DEFENDANT UBER TECHNOLOGIES,
INC., RASIER, LLC, AND RASIER-CA,
LLC'S BRIEF IN SUPPORT OF
CATEGORY 3-5 CLAWBACKS
PURSUANT TO SPECIAL MASTER
ORDER NO. 4, § III**

Pursuant to Special Master Order No. 4, § III, ¶ 3 (Dkt. 2933), Defendants submit this brief in support of Uber’s privilege assertions for documents it clawed back pursuant to Pretrial Order No. 14 prior to May 5, 2025 (“Category 3-5 clawbacks”). Defendants respectfully request that the Special Master uphold the privilege claims as to the challenged documents.

Defendants incorporate by reference the legal standard and arguments set forth in Defendants’ prior briefing (Dkts. 2433, 2461, 2528, 2544, and 2580). As further support for their privilege claims, Defendants provide the arguments and factual support listed below, including the May 13, 2025 declaration of Uber’s Legal Director, Global Safety Daniel Kolta (Ex. A). The applicable legal standard and arguments outlined below and in prior briefs, the declarations from in-house counsel, and the factual material previously provided to the Special Master,¹ when reviewed in conjunction with the challenged documents and the associated metadata fields, establish that the documents at issue are privileged.

I. Uber Has Appropriately Exercised Its Right to Claw Back Privileged Documents.

The documents submitted for the Special Master’s review should remain protected as privileged, and subject to other applicable protections, notwithstanding prior production. Uber has appropriately exercised its clawback rights under Stipulated Pretrial Order No. 14: Federal Rule of Evidence 502(d) and Privilege Materials (“PTO 14”) (Dkt. 396). PTO 14 provides that “the production of any privileged or otherwise protected or exempted information in this case ***shall not be deemed a waiver or impairment of any claim of privilege or protection in this case*** or in any other federal or state proceeding, including, but not limited to, the attorney-client privilege, the protection afforded to work product materials, statutory privileges and protections, or the subject matter thereof, as to the produced document and any related material.” PTO 14, Sec. B.2 (emphasis added).

Uber timely notified Plaintiffs of its intention to clawback these documents. Uber has provided a privilege log and replacement images for all documents subject to its clawback request. Plaintiffs have identified six documents at issue that they claim are other versions of documents that were

¹ As requested by the Special Master, Uber has provided: (1) a glossary of terms commonly used in disputed documents, (2) a list of names and titles of relevant Uber inside and outside counsel, and (3) a digest of third-parties present in its privilege log. Defense counsel will also be available for any questions the Special Master may have during the review process.

1 originally logged as part of Tranches 1-4 and later produced (JCCP_MDL_PRIVLOG089317,
 2 JCCP_MDL_PRIVLOG089318, JCCP_MDL_PRIVLOG089328, JCCP_MDL_PRIVLOG089340,
 3 JCCP_MDL_PRIVLOG089358, and JCCP_MDL_PRIVLOG089368). Uber is considering seeking
 4 relief and/or reconsideration from Judge Cisneros regarding any waiver claim. (ECF 2855).
 5 Accordingly, Uber respectfully requests that the Special Master defer ruling on these documents until
 6 the potential waiver issue is adjudicated and resolved before Judge Cisneros. The Special Master,
 7 however, should consider and resolve the privilege and work product claims applicable to the
 8 remainder of the documents at issue in this set, as set forth herein.

9 **II. Additional Context and Factual Information Supports Uber's Privilege Assertions.**

10 Uber offers additional context and factual information to support the privilege assertions as to
 11 certain documents within this set.

12 **A. Information and Correspondence Reflecting Legal Analysis and Advice Regarding a 13 Proposed Rider Safety Program Are Privileged.**

14 Uber properly clawed back and provided replacement images with redactions to certain
 15 documents regarding a proposed rider safety program because they contain in-house counsel's legal
 16 advice, analysis, or conclusions regarding the program:

- 17 • JCCP_MDL_PRIVLOG089291
- 18 • JCCP_MDL_PRIVLOG089292
- 19 • JCCP_MDL_PRIVLOG089293
- 20 • JCCP_MDL_PRIVLOG089294
- 21 • JCCP_MDL_PRIVLOG089295
- 22 • JCCP_MDL_PRIVLOG089296
- 23 • JCCP_MDL_PRIVLOG089356

24 These redactions are necessary to protect the legal analysis and advice of Uber's in-house
 25 counsel regarding the proposed rider safety program. As to -89291 through -89296, the analysis and
 26 advice includes input from "Tony," i.e., Tony West, Uber's Chief Legal Officer and Corporate
 27 Secretary. The redactions further reflect efforts to gather information and estimates in preparation for

1 ongoing discussions with Mr. West. Likewise, -89356 includes limited redactions to explicit
 2 references to legal advice and risk informed by the legal team related to the same proposed rider safety
 3 program.

4 Uber's privilege assertions as to these documents are further supported by the May 13, 2025
 5 declaration of Uber's Legal Director, Global Safety, Daniel Kolta (Ex. A, Dkt. 2985-3). As Mr. Kolta
 6 explained, Uber's legal department undertook an investigation and analysis concerning the legal risks,
 7 including the potential legal costs, of the proposed rider safety program in anticipation of litigation.
 8 As Mr. Kolata explained, the legal department also conducts research and analyzes various federal
 9 and state laws, along with case law interpreting and applying such laws, and Uber's prior litigation
 10 experience.

11 The legal analysis, advice, and conclusions reflected in the redactions, including those
 12 addressing legal costs, are privileged and work-product protected. *See Green v. Baca*, 226 F.R.D.
 13 624, 652 (C.D. Cal. 2005) ("Opinion work product, including the mental impressions, conclusions,
 14 opinions, or legal theories of an attorney, is entitled to nearly absolute protection."); *Staley v. Gilead
 15 Scis., Inc.*, 2021 WL 4318403, at *2 (N.D. Cal. July 16, 2021) ("the attorney-client privilege can still
 16 obtain even where a business decision is implicated. Specifically, if an attorney gives a client legal
 17 advice on a business decision, that communication is protected by the privilege"); *see also Rhone-
 18 Poulenc Rorer Inc. v. Home Indem. Co.*, 139 F.R.D. 609, 614-15 (E.D. Pa. 1991) ("The litigation's
 19 ultimate cost to the client has great significance in determining whether a lawsuit will be tried or settled
 20 and, if settled, for what amount. Establishing the value of a claim is analytically complex, requiring
 21 an assessment of the body of evidence and the particular legal issues involved in each case, as well as
 22 an evaluation of the case's strengths and weaknesses. It is one of the more challenging and difficult
 23 tasks a lawyer confronts these documents should not be subject of discovery.") (citation omitted);
 24 *Zurich Am. Ins. Co. v. Superior Ct.*, 155 Cal. App. 4th 1485, 1502 (2007) ("If legal advice is discussed
 25 or contained in the communications between [corporate] employees, then to that extent, it is
 26 presumptively privileged. A communication reflecting a discussion of litigation strategy which
 27 expresses that the strategy is in response to advice of counsel would come within the privilege").

1 **B. Other Documents Made Available to the Special Master Further Support Uber’s
2 Privilege Assertions.**

3 Plaintiffs’ challenge to JCCP_MDL_PRIVLOG089327 should be rejected because later in
4 time emails provide additional support for Uber’s privilege assertion. This document was clawed back
5 and reproduced with limited redactions to protect legal advice regarding employment law
6 considerations with respect to certain initiatives to promote rider safety. Plaintiffs challenged this
7 document based on their observation that there was no attorney on the challenged document. However,
8 other emails demonstrate that in-house counsel was, in fact, involved in the decision-making and
9 recommendations contained within the redacted portion of the challenged email. See
10 JCCP_MDL_PRIVLOG005204 (Jan. 13, 2022 email from Willis Fannon regarding whether the
11 redacted portion was a “mandate from our legal teams” and Jan. 14, 2022 response by Daniel Kolta
12 clarify the legal team’s advice). Taken as a whole, the thread demonstrates that legal advice from in-
13 house counsel was incorporated in the portions of the email that have been redacted as privileged.

14 **C. Confidential Chat Threads Should Be Protected as Privileged Because They Reflect
15 Legal Advice from In-House Counsel and Were Prepared in Anticipation of
16 Litigation.**

17 JCCP_MDL_PRIVLOG089335 and JCCP_MDL_PRIVLOG089336 are confidential chat
18 threads that contain various references to discussions with Uber’s legal team, including Katie
19 Waitzman, Tony West, Jennifer Handley, Scott Binnings, and Claire Eagen. While Plaintiffs
20 acknowledge that these chats reference discussions involving lawyers, Plaintiffs incorrectly argue that
21 they reflect a primary business purpose. Indeed, “communications made during the course of an
22 attorney-client relationship”—as opposed to a relationship with some other ‘dominant purpose’” are
23 privileged. *Costco v. Wholesale Corp. Sup. Ct.*, 47 Cal. 4th 725, 740 (2009). The fact that these
24 communications were discussed between non-lawyers in an informal chat thread does not negate the
25 privileged nature of the communications when the chat thread was kept confidentially.

26 **D. Documents Relating to Uber’s Internal Handling of Mass Tort Cases Are Protected
27 as Privileged and Work Product.**

1 Plaintiffs have challenged a series of documents that reflect advice of Uber's legal team in the
 2 handling of mass tort cases. Not only does this information demonstrate the advice of counsel, it also
 3 reflects Uber's internal process for handling cases as part of anticipated or pending litigation. These
 4 documents include: JCCP_MDL_PRIVLOG089345, JCCP_MDL_PRIVLOG089369,
 5 JCCP_MDL_PRIVLOG089370, JCCP_MDL_PRIVLOG089371, JCCP_MDL_PRIVLOG089372,
 6 JCCP_MDL_PRIVLOG089373, JCCP_MDL_PRIVLOG089374, JCCP_MDL_PRIVLOG089375,
 7 and JCCP_MDL_PRIVLOG089376. Plaintiffs challenged these documents based on their observation
 8 that there were no attorneys identified in the metadata. However, identification of an attorney in the
 9 metadata is not a prerequisite for a privilege assertion. Nor is it necessary when, like here, the face of
 10 the documents demonstrates that they are intended to facilitate in the defense of anticipated or pending
 11 litigation.

12 **E. Internal Analyses Regarding the Development of Safety Features in Partnership with**
 13 **Uber In-House Counsel Are Privileged.**

14 Uber's in-house counsel was closely involved in the development of safety features referenced
 15 in JCCP_MDL_PRIVLOG089333. Defendants clawed this document back in order to apply limited
 16 privilege redactions to portions of this document that are marked as "Attorney-Client Privilege" and
 17 that are reflective of the legal analysis and advice that originated from in-house counsel. *See, e.g.,* Apr.
 18 21, 2025 Declaration of Daniel Kolta (provided to the Special Master *ex parte* on April 21, 2025) and
 19 June 2, 2025 Declaration of Scott Binnings (Dkt. 3141-1). The Special Master has previously found
 20 that other documents on this same subject matter are privileged.² The same result is appropriate here.

21 The Special Master should uphold the privilege assertion as to each of the documents submitted
 22 for review.

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 26 ² On April 28, 2025, in relation to the Kansal custodial documents, the Special Master ruled that four email
 27 chains (JCCP_MDL_PRIVLOG079870, JCCP_MDL_PRIVLOG079712, JCCP_MDL_PRIVLOG079416,
 28 and JCCP_MDL_PRIVLOG079417) were communications "sent for the purpose of obtaining and facilitating
 legal advice" and were privileged.

1 DATED: June 3, 2025

Respectfully submitted,

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